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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Dated: 07th September, 2016***

+ W.P.(C) 3774/2015

P.C. GARG

..... Petitioner

Through : Dr. Ashwani Bhardwaj, Advocate

versus

UNION OF INDIA

..... Respondent

Through : Mr. Sanjeev Narula, CGSC with
Mr. Ajay Kalra and Mr. Abhishek
Ghai, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. The present writ petition has been filed impugning the order dated 20.08.2014 passed by the Central Administrative Tribunal (*in short the 'Tribunal'*) whereby the OA 484/2013 filed by the petitioner herein stands dismissed. The petitioner/ applicant therein had filed the OA being aggrieved by the rejection of his representation for re-examining his ACRs for the years 2007-2008 and 2008-2009.
2. The petitioner joined the respondent in May, 1988 as Senior Research Assistant ('SRA'), R & D as a direct recruit. He was promoted to the post of 'Under Secretary' on 07.12.2000. He became eligible for promotion as Deputy Secretary on his completion of five years of service on 01.01.2006. The petitioner was served a Memo dated 09.12.2010 *inter alia* communicating the below benchmark of the ACRs for the period 2007-2008 and 2008-2009. The petitioner was graded as Good,

but since the benchmark for promotion was Very Good, thus the grading given to the petitioner was below benchmark. The petitioner made a representation to the respondent which was rejected by an order dated 28.01.2011. Aggrieved by the order of rejection, the petitioner approached the Tribunal by filing an OA, which stands dismissed by the Tribunal.

3. Mr. Bhardwaj, learned counsel for the petitioner, submits that prior to the downgrading of the ACRs, no show cause notice, memo or warning was given to the petitioner. He further submits that the remarks in the ACRs are vague in nature and lack details. The ACRs are not specific. As far as the order by which the representation stands decided, Mr. Bhardwaj submits that the order is a non-speaking order as it lacks reasons and further it has been passed without any application of mind. Another ground raised by the counsel for the petitioner is that the ACR for the period 2008-2009 has been initiated by the Additional Secretary, under whom the petitioner had never worked and thus, the Additional Secretary had no opportunity to assess him. He submits that the ACRs are to be filled in by a Competent Authority and not necessarily by a higher authority.
4. Mr. Narula, learned counsel for the respondent has produced the original file before us. Relying upon the notings in the original file, Mr. Narula contends that the representation of the petitioner was duly considered and upon consideration of the representation, the same was rejected. He submits that the letter sought to be brought to the notice of the Court is only a covering letter and reasons find mention in the note sheet which has been produced. He further submits that the petitioner was not downgraded and thus there was no necessity of issuing any warning or show cause to the petitioner. The petitioner has been assessed as Good

which cannot be termed as downgrading. Learned counsel further submits that the copies of the ACRs which have been filed on record would show that the assessment of the officer is according to the benchmarks which have been made and the Court cannot make an assessment in proceedings under Article 226 of the Constitution of India. He submits that the Court cannot sit as a court of appeal over the grading which has been done by the Reviewing Officer and the Accepting Authority. To this end, he has relied upon the judgment of this Court in ***Mohan Chandra Bhatt v. UOI & Ors.*, 2006 (89) DRJ 88 (DB).**

5. The learned counsel further submits that even otherwise post the decision by the Supreme Court of India in the case of ***Dev Dutt v. Union of India*, (2008) 8 SCC 725** an opportunity was granted to the petitioner to make the necessary representation.
6. At this stage, Mr. Bhardwaj, learned counsel for the petitioner submits that the petitioner, prior to the two years when he was downgraded, had been assessed as 'Very Good' and post the period, he has again been assessed as 'Very Good' and 'Outstanding'. He submits that, as of now, persons junior to him have been promoted while the petitioner on account of the downgradation has not been promoted. He submits that the remarks in the ACRs would show that there was nothing to show that either there was lack of integrity on the part of the petitioner or that he lacked knowledge in his field. He further submits that the petitioner would be satisfied if a direction is issued to the respondent to reconsider his representation fairly and in accordance with law; and the petitioner would be willing to accept the final order which may be passed and he waives his right to challenge the same.
7. We have heard the learned counsel for the parties and considered their rival submissions.

8. From the pleadings on record, it transpires that the petitioner was assessed to Very Good prior to years 2007-2008 and 2008-2009. After he was assessed Very Good to Good, copies of the ACRs were supplied to him and based on the judgment of the Supreme Court of India in the case of *Dev Dutt (supra)*, he was granted an opportunity to make a representation. Accordingly, the petitioner had made a representation dated 27.12.2010 seeking reconsideration of his ACRs. The said representation was rejected by the respondents vide the memorandum dated 28.01.2011. The letter memorandum reads as under:

“ Please refer to your representation dated 27.12.2010 requesting for upgradation of ACRs grading for the periods 2007-08 and 2008-09.

2. The representation has been examined in terms of DoP&T OM No.21011/1/2010-Estt(A) dated 13.04.2010 and the same has not been accepted by the Competent Authority. No change, therefore, has been effected in the subject ACRs.

3. This issues with the approval of Secretary.”

9. While the covering letter by which the petitioner was informed about the rejection of his representation is, no doubt, devoid of any reason; but we have examined the original file which shows that the representation was fully considered. The original record has been seen and returned. The note dated 10.01.2014 would show that it was found that there was no merit in the contention of the petitioner herein. *Prima facie*, we are of the view that having regard to the fact that the petitioner had been assessed as ‘Very Good’ prior to the two years in question and again assessed as ‘Very Good’ and ‘Outstanding’ post the period, while considering his representation, the order should have revealed a greater thought process of the competent authority. We say this for the reason that copies of the ACRs which are on record would show that there is no material against the petitioner except in the summing up remarks which

shows ‘[l]acks enthusiasm or the will to enrich his knowledge of the subject assigned to him’; while in his representation dated 27.12.2010, he has categorically stated that he was studying and reporting the Chemical and Biological Warfare (‘CBW’) developments of the target countries and he is the only Officer in the Division who has thoroughly studied, developed and disseminated the information on CBW programmes of various countries from time to time. He had dealt with CBW issues successfully and was able to answer all the related queries as this subject was still on his fingertips. We also say this for the reason that for the period 2008-2009, the petitioner has submitted that ACRs were filled in by the then Additional Secretary who had never had any opportunity to assess him as the petitioner was not working under him; which fact is, however, disputed by the counsel for the respondent who submits that there is no bar and as per the OM in case the Reviewing Officer is not available, the Additional Secretary would be competent to write the ACRs. Controverting the same, the counsel for the petitioner submits that the Initiating Officer was available and even then the ACRs were filled in by the then Additional Secretary.

10. Having regard to the entire facts of this case and without being treated as a precedent, we dispose of the present writ petition with the following directions:
 - (i) The order/ memorandum dated 28.01.2011 by which the representation of the petitioner stands rejected is set aside;
 - (ii) The representation of the petitioner would be reconsidered in the light of the observations made by this Court;
 - (iii) The statement made by the petitioner, who is present in Court, is taken on record that he would accept the final order which may be passed and waives his right to challenge the same; and

(iv) We have no hesitation in saying that the representation of the petitioner would be considered fairly by the concerned authorities.

11. The writ petition is disposed of accordingly.

CM.APPL 18084/2015

12. The application stands disposed of in view of the orders passed in the present writ petition.

G.S.SISTANI, J

I.S. MEHTA, J

SEPTEMBER 07, 2016
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